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7 BEFORE THE INSURANCE COMMISSIONER  
8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application regarding  
10 the Conversion and Acquisition of Control  
11 of Premera Blue Cross and its Affiliates

Docket No. G02-45

12  
13 JOINT PROPOSAL REGARDING  
14 DISCOVERY AND HEARING  
15 SCHEDULE

16  
17 **INTRODUCTION**

18 In compliance with the Fourth Order, dated February 10, 2003, the lead attorneys  
19 for the OIC Staff, for PREMERA and Premera Blue Cross (hereinafter, "Premera"), and  
20 for the five groups of interveners (hereinafter, the "Intervener Groups") had a conference  
21 on February 21, 2003, to discuss the following issues: preparation of expert reports, a  
22 discovery schedule, discovery procedures, availability of documents, adjudicative hearing  
23 schedule and any other matters that might be relevant to the hearing and its procedures.<sup>1</sup>  
24 The lead attorneys also conferred on February 25 and 27, 2003, to do additional work on  
25 this Joint Proposal.

<sup>1</sup> Taya Briley, counsel for the Association of Washington Public Hospital Districts,  
appeared for Michael Madden at this conference on behalf of The Hospital Associations.  
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1 As a result of these meetings, the OIC Staff, Premera and the Intervener Groups  
2 were able to agree on a number of issues<sup>2</sup>; however, there were some issues on which  
3 there continue to be differences of opinion. In further compliance with the Fourth Order,  
4 the OIC Staff, Premera, and the Intervener Groups have submitted this Joint Proposal  
5 which sets forth those issues on which agreement has been reached and, where agreement  
6 has not been reached, the positions of the respective entities.

7 The OIC Staff, Premera and the Intervener Groups anticipate that the  
8 Commissioner will be scheduling public hearing(s) in regard to this Application in the  
9 upcoming months. This Joint Proposal does not purport to address the scheduling of those  
10 public hearing(s).

## 11 **PROPOSALS**

### 12 **A. Appointment of a Special Master for Discovery Issues**

13 The parties<sup>3</sup> agree that the Commissioner should appoint a Special Master for  
14 discovery issues. The procedure for the Special Master would be as follows:

15 1. If any of the parties has a dispute regarding any discovery matter (for  
16 example, whether a response to a document request is sufficient or whether a document  
17 should be deemed protected from disclosure by the attorney-client communication  
18 privilege), the dispute would be presented in writing to the Special Master.

19  
20 <sup>2</sup> In participating in these meetings and submitting this Joint Proposal, Premera is not  
21 waiving its objections to the Third Order, which is currently the subject of a Petition for  
22 Review.

23 <sup>3</sup> The OIC Staff and the Intervener Groups prefer to refer to the OIC Staff, Premera and  
24 the Intervener Groups collectively as the “parties” and individually as a “party.” Premera  
25 objects to the use of these terms, because it believes that the OIC Staff and Premera are  
the parties in this case and the Intervenor Groups are interveners. However, without  
waiving its objection, Premera is willing, for the sake of convenience in drafting this Joint  
Proposal, to allow the use of the terms “parties” and “party” in this document as short-  
hand for the three different entities.

1           2.       In regard to any disputes over document production, the party resisting the  
2 request would have to state the basis of its objections with specificity within 15 days after  
3 receipt of the document request. The party seeking production would have to file with the  
4 Special Master its motion and supporting brief to compel production within 7 business  
5 days from the date of receipt of the objection, and the party objecting to the request would  
6 have the same number of days to file its response and supporting brief.

7           3.       The OIC Staff, Premera or any of the Intervener Groups may request oral  
8 argument. If the Special Master determines that oral argument would be beneficial, the  
9 Special Master will arrange for a prompt telephonic or in-person conference. The Special  
10 Master will decide the dispute as soon as possible and will promptly issue a written  
11 decision, preferably within 3 business days.

12           4.       If any party is dissatisfied with a decision of the Special Master, an appeal,  
13 along with any supplemental briefing on the issue, must be submitted to the  
14 Commissioner within 5 business days of receipt of the Special Master's written decision.  
15 The other party or parties must submit a reply along with any supplemental briefing  
16 within 5 business days of receipt of the appeal. The Commissioner would then promptly  
17 issue a written decision that affirms, reverses or modifies the decision of the Special  
18 Master. Any of the parties may request oral argument. If the Insurance Commissioner  
19 determines that oral argument would be helpful, the Insurance Commissioner will arrange  
20 for a prompt telephonic or in-person conference.

21           5.       The Special Master will also be available to resolve discovery scheduling  
22 disputes (for example, dates for depositions) or disputes that may arise during the course  
23 of a deposition (for example, claims that having to answer particular questions would  
24 invade the attorney-client privilege). The Special Master may decide these issues, without

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1 briefing, by telephone conference. If any party wanted to appeal the Special Master's  
2 decision, the same appeal process to the Commissioner described above will apply.

3 6. While the Special Master will have some discretion to adjust minor  
4 deadlines (for example, giving a party a few additional days to file a brief), the Special  
5 Master should not have discretion to extend any of the timelines in the scheduling order, if  
6 the extension would have the effect of postponing the date that the Commissioner set for  
7 the hearing.<sup>4</sup>

8 **B. Proposal as to who should be appointed Special Master**

9 1. Premera respectfully recommends that the Commissioner appoint one of  
10 the following as the Special Master: George Finkle, Terrence Carroll, or Roselle Pekelis.  
11 The recommendation is based on the fact that each of these individuals are distinguished  
12 former judges who are now full-time mediators. Each would be able to quickly get up to  
13 speed in the case and render prompt resolutions of the matters. **Attachment C** provides  
14 some information regarding their experience and expertise.

15 If all of the parties agree to this proposal, Premera is willing to pay the fees and  
16 costs of the Special Master, with the following exceptions: (1) if there is a motion to  
17 compel brought by an Intervener Group(s) against Premera or *vice versa*, the party that did  
18 not substantially prevail would have to pay all of the Special Master's fees and costs  
19 attributable to that motion; and (2) if there is a motion to compel brought by an Intervener  
20 Group(s) against the OIC Staff or *vice versa*, the Intervener Group(s) would have to pay  
21 all of the Special Master's fees and costs attributable to that motion, if the Intervener  
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23 <sup>4</sup> The Interveners request the opportunity to seek extension of the deadlines, due to  
24 discovery disputes or delay, as described in Section E.1.c.

1 Group(s) did not substantially prevail. In no event would the OIC Staff have to pay any of  
2 the fees or costs of the Special Master.

3 2. The OIC Staff and the Intervener Groups are in the process of conferring  
4 with their clients and considering their response to Premera's proposal. They respectfully  
5 request that they be permitted to advise the Commissioner of their response at the hearing  
6 on March 3<sup>rd</sup>, and Premera has no objection to their doing so.

7 **C. Entry of Confidentiality Agreements and a Protective Order**

8 Premera and the Intervener Groups agree that confidentiality agreements (between  
9 Premera and the Intervener Groups) and some form of a protective order are needed in  
10 order to facilitate the production of documents and other information and in order to meet  
11 the concerns that Premera has regarding the protection of its confidential trade secrets and  
12 similar information. This includes information provided by Premera to the consultants  
13 retained by the OIC Staff and the Alaska Division of Insurance ("States' Consultants").

14 Premera and the Intervener Groups are in the process of drafting such agreements  
15 and a proposed protective order, with the consent of the OIC Staff. To facilitate this  
16 process, Premera has provided the OIC Staff and the Intervener Groups with a copy of a  
17 proposed protective order that it has developed for litigation that has recently been filed in  
18 King County Superior Court (Washington State Hospital Association et al. v. Premera  
19 Blue Cross, No. 03-2-16467-4 SEA).

20 It is the hope of the OIC Staff, Premera, and the Intervener Groups that the  
21 confidentiality agreements can be executed during the week of March 3<sup>rd</sup> and that an  
22 agreed protective order can be presented to the Commissioner that week.

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1 **D. Deadline for Preparation of Expert Reports**

2 1. The OIC Staff's position

3 The States' Consultants, other than the legal consultants, advise that, once they  
4 confirm that production of the documents that the OIC Staff and the States' Consultants  
5 have requested from Premera is substantially complete permitting the States' Consultants  
6 to render useful reports, 50 days will be required to produce draft reports. Those of the  
7 States' Consultants who are retained to render opinions regarding legal matters advise that  
8 57 to 64 days from the date production is substantially complete will be required to  
9 produce draft reports. The production of documents is currently not substantially  
10 complete and, therefore, the States' Consultants are unable to prepare or submit useful  
11 reports. The OIC Staff, and the Alaska Division of Insurance, has contracted with the  
12 States' Consultants to issue draft reports prior to submission of final reports for the  
13 purposes of ensuring that the reports directly and appropriately address the issues the  
14 subject of this proceeding, that they are factually accurate, and that the States' Consultants  
15 will be able to render final reports which reflect any amendments to the Application that  
16 may be made by Premera in response to the concerns raised by the OIC Staff or the  
17 content of the draft reports.

18 2. Premera's position

19 Premera takes the position that the OIC Staff's non-legal and legal consultants  
20 should be given a deadline of March 31, 2003 to produce final reports and to provide  
21 copies of those reports to Premera and the Intervener Groups (subject to whatever  
22 confidentiality and protective order requirements are in place).

1           3.       The Intervener Groups' position

2           The Intervener Groups agree with the OIC Staff position regarding the timelines  
3 for the promulgation of draft and final expert reports.

4       **E.       Discovery Procedures and Schedule**

5           The following sections sets forth the discovery activities and, within each section,  
6 the positions of Premera, the OIC Staff and the Intervener Groups.

7           For the convenience of the Commissioner, we have attached summaries which set  
8 forth the same information in a somewhat different format. **Attachment A** is the  
9 Summary of Premera's Proposed Discovery and Hearing Schedule. **Attachment B** is the  
10 Summary of the OIC Staff's Proposed Hearing Timeline Including Discovery and Hearing  
11 Schedule. The Interveners Group agrees with the OIC Staff's proposed discovery and  
12 hearing schedule.

13           **1.       Completion of Discovery and Setting the Hearing Date.**

14           a.       Premera proposes that the Commissioner should enter an order directing  
15 that all discovery be completed by May 30, 2003 and that the Hearing begin one week  
16 later, on June 9, 2003.

17           b.       The OIC Staff urges that until the States' Consultants submit their final  
18 reports, the Commissioner should not enter an order establishing discovery deadlines or  
19 setting the hearing. Premature establishment of these dates will result in undercutting the  
20 usefulness of any reports submitted by the States' Consultants since information necessary  
21 for rendering meaningful opinions upon which the Commissioner may rely in determining  
22 the issues in this matter may not be made available by Premera to the consultants for  
23 consideration in their reports. Setting arbitrary deadlines and dates without reference to  
24 the requirements of the States' Consultants will result in a fatally flawed determination.

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1 The OIC Staff requests that the Commissioner adopt the schedule contained in  
2 **Attachment B.**

3 c. The Intervener Groups agree with the OIC Staff position regarding the  
4 completion of discovery and establishment of discovery deadlines and hearing schedule.  
5 The Intervener Groups propose that any party may submit a request to the Insurance  
6 Commissioner requesting an extension of a timeline in the scheduling order, if discovery  
7 disputes interfere with the party's ability to meet the timelines in the scheduling order.

8 **2. Requests for Production of Documents**

9 The OIC Staff, Premera, and the Intervener Groups agree that each should be  
10 permitted, as of February 27, 2003, to make Requests for Production of Documents, which  
11 are to be responded to within 30 days (or on a rolling production basis<sup>5</sup>) and that any  
12 objections be made within 15 days of service; provided, however, that the producing party  
13 is not required to produce any documents unless and until confidentiality agreements have  
14 been entered into between the Intervener Groups and Premera and a Protective Order  
15 regarding documents has been entered by the Commissioner.

16 The parties disagree as to the cut-off date for making discovery requests.

17 a. Premera proposes that the last day for making document requests should be  
18 March 28, 2003.

19  
20  
21 <sup>5</sup> The term "rolling production basis" means that, in the situation where large numbers of  
22 documents must be located and prepared for production, the producing party agrees to  
23 produce those documents within 30 days or as soon thereafter as they become available  
24 for production. If the producing party seeks to avail itself of the rolling production  
25 method, the producing party must state in writing that it is doing so in good faith and must  
explain why it is not able to produce all of the documents within 30 days and when it  
expects to complete the production. In any event, the rolling production shall not extend  
beyond the closing date of discovery. This rolling production method cannot be used in  
regard to the documents already produced by Premera to the OIC Staff.



1           b.       The OIC Staff proposes that all formal discovery should be closed 90 days  
2 after the States' Consultants submit their final reports.

3           c.       The Intervener Groups agree with the OIC Staff position regarding the  
4 close of discovery, providing that the parties can request an extension of the timeline from  
5 the Insurance Commissioner if discovery disputes or delay interfere with a party's ability  
6 to obtain requested discovery within the established timeline.

7           **3. Interrogatories and Requests for Admission**

8           a.       None of the parties will be using Interrogatories.

9           b.       Premera does not think that any useful purpose is served in this proceeding  
10 by Requests for Admission, so it opposes the use of Requests for Admission. If the  
11 Commissioner orders the use of such Requests, Premera recommends that it be limited to  
12 10 requests for the OIC Staff, 10 requests for Premera and 10 requests total for all of the  
13 Intervener Groups and that the cut-off date for making such Requests be March 28, 2003.

14          c.       The OIC Staff asserts that no useful purposed is served by Requests for  
15 Admission in this proceeding, and so opposes the use of that device. The OIC Staff  
16 proposes that all formal discovery should be closed 90 days after the States' Consultants  
17 submit their final reports.

18          d.       The Intervener Groups propose to be able to submit Requests for  
19 Admissions as of the issuance of the Commissioner's scheduling order. The Intervener  
20 groups agree with the OIC Staff position that all formal discovery should be closed 90  
21 days after the States' Consultants submit their final reports.

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1           **4. Depositions**

2           a.       Premera proposes that the Commissioner order that depositions may only  
3 be taken of those individuals -- experts or non-experts -- who file Pre-filed Direct  
4 Testimony.

5           b.       The OIC Staff disagrees with Premera's position.

6           c.       The Intervener Groups disagree with Premera's position and believe that  
7 any limitations on depositions are premature.

8           **5. The deadline for the OIC Staff to serve its Pre-filed Expert**  
9           **and Non-expert (fact witness) Direct Testimony.**

10          a.       Premera's Position.

11          Premera proposes that, along with serving the experts' reports on March 31<sup>st</sup>, the  
12 OIC Staff also be required to serve -- on March 31<sup>st</sup> -- its Pre-filed Expert Direct  
13 Testimony and, if it has any, the Pre-filed Non-expert Direct Testimony. The expectation  
14 regarding the Pre-filed Expert Direct Testimony is that it would consist of (a) a brief  
15 statement of the qualifications of the expert (along with a written resume) and (b) the  
16 expert's report.

17          Premera proposes that the OIC Staff be limited to no more than 5 non-expert  
18 witnesses.

19          Premera proposes the following enforcement mechanisms: Any OIC Staff expert  
20 or non-expert witness who does not file his/her pre-filed testimony by this deadline will  
21 not be permitted to testify at the hearing. The OIC Staff experts will be permitted to  
22 testify at the hearing in strict rebuttal to any expert testimony of the Premera or Intervener  
23 Group experts (that is, the OIC Staff experts will be able to testify orally at the hearing in  
24 response to the expert testimony of the others, but will not be able to give new, non-

1 rebuttal testimony that was not included in the OIC Staff experts' pre-filed direct  
2 testimony). If the OIC Staff believes that it needs to present non-expert rebuttal testimony  
3 at the hearing, it may move the Special Master or the Commissioner for permission to  
4 submit such rebuttal testimony (attaching a draft of such rebuttal testimony); the Special  
5 Master or Commissioner will rule as to whether such non-expert rebuttal testimony will be  
6 permitted and, if it is, as to the terms and conditions upon which it will be permitted.

7 b. The OIC Staff's Position

8 The OIC Staff proposes that, along with serving its experts' reports, it pre-file all  
9 direct testimony within 100 days after the States' Consultants submit their final reports.  
10 The OIC Staff disagrees that the Pre-filed Expert Direct Testimony would be limited to  
11 (a) a brief statement of the qualifications of the expert (along with a written resume) and  
12 (b) the expert's report.

13 The OIC Staff urges that it is premature to limit the number of expert or fact  
14 witnesses and that Premera's proposed enforcement mechanism is unnecessary.

15 c. The Intervener Groups' Position

16 The Intervener Groups support the OIC Staff's position regarding the schedule for  
17 filing final expert reports and pre-filed testimony.

18 The Intervener Groups disagree with Premera regarding limitations on the format  
19 for the pre-filed testimony.

20 The Intervener Groups oppose any limitation on the number of witnesses at this  
21 point as premature. The Intervener Groups propose that the Insurance Commissioner  
22 schedule a pre-hearing conference after the close of discovery to address issues related to  
23 how administrative hearing will be conducted and to address any issues related to rebuttal  
24 testimony.

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2       **6.       The time period for depositions of OIC Staff witnesses**

3       a.       Premera's Position

4       Premera proposes that it and the Intervener Groups have 30 days from the receipt  
5 of an OIC Staff Expert's Report to depose that expert. Assuming that all of the OIC  
6 Staff's Experts' Reports will be served on March 31<sup>st</sup>, this would give Premera and the  
7 Intervener Groups until April 30<sup>th</sup> to depose the OIC Staff experts.

8       Premera also proposes that it and the Intervener Groups have those same 30 days  
9 to depose any of the up to five OIC Staff non-expert witnesses.

10       b.       The OIC Staff's Position

11       The OIC Staff proposes that within 45 days after the States' Consultants submit  
12 their final reports, the States' Consultants may be deposed.

13       The OIC Staff urges that it is premature to limit the number of expert or fact  
14 witnesses subject to deposition.

15       c.       The Intervener Groups' Position

16       The Intervener Groups support the OIC Staff's proposed schedule for conducting  
17 depositions of expert witnesses. The Intervener Groups object to any limitation on the  
18 number of depositions of witnesses as premature.

19       **7.       The deadline for Premera and the Intervener Groups to serve**  
20       **their Pre-filed Expert and Non-expert (fact witnesses) Direct**  
21       **Testimony.**

22       a.       Premera's Position

23       Premera proposes that it and the Intervener Groups be required to serve their Pre-  
24 filed Expert and Non-expert Direct Testimony by April 30, 2003. The pre-filed testimony  
25 of those experts would be in the same format as that of OIC Staff's experts.

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1 Premera proposes that it should be limited to 5 non-expert witnesses and that each  
2 of the Intervener Groups should be limited to one non-expert witness per Intervener  
3 Group.

4 Premera proposes the following enforcement mechanisms: Any Premera or  
5 Intervener Group expert or non-expert witness who does not file his/her pre-filed  
6 testimony by this deadline will not be permitted to testify at the hearing. In addition to  
7 testifying as to their own affirmative case and as to their criticisms of the OIC Staff's  
8 experts' pre-filed direct testimony through their pre-filed direct testimony, the Premera  
9 and Intervener Group experts will be permitted to testify orally at the hearing in strict  
10 rebuttal to any expert testimony of the OIC Staff or Premera or Intervener Group experts.  
11 If Premera or the Intervener Groups believe that it/they need to present non-expert rebuttal  
12 testimony at the hearing, it/they may move the Special Master or the Commissioner for  
13 permission to submit such rebuttal testimony (attaching a draft of such rebuttal  
14 testimony); the Special Master or Commissioner will rule as to whether such non-expert  
15 rebuttal testimony will be permitted and, if it is, as to the terms and conditions upon which  
16 it will be permitted.

17 b. The OIC Staff's Position

18 The OIC Staff proposes that Premera and the Intervener Groups should pre-file all  
19 direct testimony and testimony responsive to the OIC Staff pre-filed direct testimony  
20 within 130 days after the States' Consultants submit their final reports.

21 The OIC Staff urges that it is premature to limit the number of expert or fact  
22 witnesses and that Premera's proposed enforcement mechanism is unnecessary.

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1 c. The Intervener Groups' Position

2 The Intervener groups agree with the OIC Staff's position, and additionally  
3 suggest that provision should be made in the schedule for prehearing disclosure of rebuttal  
4 witnesses.

5 **8. The time period for the depositions of the Expert and Non-expert**  
6 **(fact) Witnesses of Premera and of the Intervener Groups**

7 a. Premera's Position

8 Premera proposes that the OIC Staff, Premera and the Intervener Groups have 30  
9 days to conduct depositions regarding the Premera and Intervener Groups expert and non-  
10 expert witnesses. Assuming that the Pre-filed Direct Testimony for these witnesses is  
11 served on April 30<sup>th</sup>, the depositions would be completed by May 30, 2003.

12 b. The OIC Staff's Position

13 The OIC Staff proposes that that within 45 days after the States' Consultants  
14 submit their final reports, all parties disclose all testifying experts and fact witnesses and  
15 that within 75 days after the States' Consultants submit their final reports, all disclosed  
16 fact witnesses and the Intervener Groups' and Premera's experts may be deposed.

17 c. The Intervener's Position

18 The Intervener groups agree with the OIC Staff's position

19 **9. Pre-filed Rebuttal Testimony**

20 a. The OIC Staff's Position

21 The OIC Staff proposes that Premera and the Intervener Groups should pre-file all  
22 testimony responsive to the OIC Staff pre-filed direct testimony within 130 days after the  
23 States' Consultants submit their final reports and, within 160 days after the States'

1 Consultants submit their final reports, the parties may file pre-file testimony responsive to  
2 the Intervener Groups' and Premera's pre-filed direct testimony.

3 b. Premera's Position

4 Premera opposes the OIC Staff's proposal on Pre-filed Rebuttal Testimony as  
5 unnecessary and potentially leading to delay.

6 c. The Intervener Groups' Position

7 The Intervener groups agree with the OIC Staff's position.

8 **F. Availability of Documents**

9 The OIC Staff and Premera are preparing a separate status report, in compliance  
10 with the Fourth Order, in regard to the progress on the ongoing data and information  
11 collection.

12 The balance of this section addresses the question of what documents should be  
13 made available to the Intervener Groups.

14 1. Premera's position re producing documents  
15 to the Intervener Groups

16 Premera is willing, as a general proposition, to produce non-privileged documents  
17 to the Intervener Group that are responsive to appropriate requests for documents. It is  
18 Premera's expectation that all documents responsive to such requests will be within the set  
19 of documents (in excess of 35,000 pages) that have already been produced to the OIC  
20 Staff.

21 There may well be differences of opinion as to what is, and is not, an appropriate  
22 request and what is, and is not, responsive to a request. Premera believes that the Special  
23 Master would be best suited to make decisions regarding those differences of opinion.

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1                   2.     The OIC Staff's position re producing documents  
2                   to the Intervener Groups

3                   The OIC Staff agrees with Premera that the Special Master should be authorized to  
4                   make decisions regarding any differences of opinion as to what is, and is not, an  
5                   appropriate request and what is, and is not, responsive to a request.

6                   3.     The Intervener Groups' position re producing documents to them.

7                   To the extent that Premera's position implies that the Intervener Groups may not  
8                   be able to discover documents that are confidential, proprietary or trade secrets, the  
9                   Intervener Groups disagree. The Intervener Groups agree to work with Premera to  
10                  develop a protective order and confidentiality agreement, which should address concerns  
11                  regarding these documents.

12                To the extent that Premera's use of the term "appropriate requests for discovery" is  
13                an effort to narrow the parties' discovery rights beyond that which is generally applicable  
14                in administrative hearings of this type, the Intervener Groups object.

15                Additionally, the Intervener Groups disagree with Premera's position that all the  
16                requested documents be within the set of documents that have been provided to the OIC  
17                Staff. The Intervener Groups may require documents that have not been requested by the  
18                OIC Staff, and object to any limitation on those requests at this time. The Intervener  
19                Groups agree that the Special Master should be authorized to resolve disputes regarding  
20                written discovery requests.

21                **G.     Adjudicative Hearing Schedule**

22                Premera's position is the hearing should begin on June 9, 2003.

23                The OIC Staff's position is that the hearing should not be scheduled until the  
24                States' Consultants final reports are rendered and served.

25                The Intervener Groups agree with the OIC Staff's position.

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One point on which everyone agrees is that there should be a pre-hearing conference, approximately one month prior to the hearing, at which time details as to the actual conducting of the hearing (cross-examination, etc.) will be determined.

**H. Other Matters**

1. Payment for copying

The parties agree that they will have to pay for all copies of documents that they request, except that the OIC does not have to pay for the documents that Premera produces to it. Details about the costs will be resolved by agreement of the requesting and the producing party, but in no event will any party be required to pay more than the actual copying cost.

Unless otherwise instructed, Premera will only provide one set of documents to the requesting party. So too the OIC Staff, unless otherwise instructed, will only provide one set of documents to the requesting party.

To the extent that a requested document is in the possession of both Premera and the OIC Staff and to the extent that Premera can more readily make a photocopy of it, Premera will do so and bill the requesting party for the copy.

2. Intervener Groups' request to interview OIC Staff's consultants

a. The Intervener Groups' request

The Intervener Groups would like to arrange for informal interviews of the State's Consultants, in order to clarify the scope of the Consultants' work and assist the Interveners to ensure that the evidence produced by their experts does not duplicate that offered by the State's Consultants. The Intervener Groups are concerned that if they delay their experts' work on the Health Impact Evaluation until the OIC Staff draft reports are available, their experts may not have sufficient time to complete the evaluation, which

JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 17

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1 could force the Interveners to request extensions of discovery timelines. The Intervener  
2 Groups agree that a protective order and confidentiality agreement should be in place  
3 before the informal interviews occur.

4 The Intervener groups disagree that costs of the hourly rates of the experts should  
5 be borne by the Intervener groups. The interview should be considered to be part of the  
6 Premera application for conversion and the cost should be borne by Premera.

7 b. The OIC Staff's response

8 The OIC Staff is not opposed to such interviews so long as their content is limited  
9 to clarifying the scope of the States' Consultants' work. If the interviews are permitted,  
10 they should not begin until confidentiality agreements and a protective order have been  
11 put in place.

12 c. Premera's response

13 Premera opposes such interviews. There is no valid reason for the Intervener  
14 Groups to conduct what are, in effect, informal depositions of the OIC Staff experts. It  
15 will cause delay and lead to confusion as to what was or was not said at the interviews. If  
16 the Commissioner nevertheless authorizes these interviews, he should then also order that  
17 the Intervener Groups, and not Premera, are responsible to pay the hourly fees of the OIC  
18 Staff consultants for these interviews and for any preparation time spent by the experts for  
19 the interviews and any follow-up time thereafter.

20 DATED this 27<sup>th</sup> day of February, 2003.

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PRESTON GATES & ELLIS LLP

By Thomas E. Kelly, Jr., WSBA #05690  
Attorneys for Petitioner PREMIERA  
and Premera Blue Cross

JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 19

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OFFICE OF INSURANCE  
COMMISSIONER  
STATE OF WASHINGTON

By \_\_\_\_\_  
John F. Hamje, WSBA #32400  
Staff Attorney  
Legal Services Division

ON BEHALF OF THE OIC STAFF

JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 20

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Coopersmith & Associates, Inc.

By

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Jeffrey Coopersmith, WSBA #20932  
Designated Lead Attorney for  
Intervener, Washington State Medical  
Association

JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 21

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Bennett Bigelow & Leedom, P.S.

By Michael F. Madden, WSBA #08747  
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JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 22

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JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 23

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Columbia Legal Services

By Eleanor Hamburger, WSBA #26478  
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Coalition

JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 24

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Alaska Legal Services Corporation

By \_\_\_\_\_  
Amy McCullough  
Designated Lead Attorney for  
Intervener Group, The Alaska  
Interveners

JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 25

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1 ATTACHMENT A

2 Summary of Premera's Proposed  
3 Discovery and Hearing Schedule

4

<u>Event</u>	<u>Deadline</u>
5 1. Last date to serve document requests	March 31, 2003
6 2. Serving of (a) OIC Staff's Experts' Pre- 7 filed Testimony and their Final Reports; 8 and (b) OIC Staff's Non-expert 9 Witness(es)' Pre-filed Testimony	March 31, 2003
10 3. Thirty-day period for Premera and the 11 Intervener Groups to depose the OIC Staff's Expert and Non-expert Witnesses	April 30, 2003
12 4. Serving of (a) Premera's and the 13 Intervener's OIC Staff's Experts' Pre-filed 14 Testimony and their Final Reports; and (b) OIC Staff's Non-expert Witness(es)' Pre- 15 filed Testimony	April 30, 2003
16 5. Thirty-day period for the OIC Staff, 17 Premera and the Intervener Groups to depose Premera's and the Intervener 18 Groups' Expert and Non-expert Witnesses	May 30, 2003
19 6. First day of Hearing	June 9, 2003

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25 JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 26

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1 **ATTACHMENT B**

2 Summary of the OIC Staff's Proposed  
3 Hearing Timeline Including Discovery and Hearing Schedule

4 The date the States' Consultants confirm receipt of substantially all of the requested  
5 documents and information including completion of interviews of Premera management  
and its consultants is referred to as the "Completion Date".

6 50 days after the Completion Date: The States' non-legal Consultants submit draft  
7 written reports and executive summaries.

8 57 to 64 days after the Completion Date: The States' legal Consultants submit  
9 draft written reports and executive summaries.

10 Within 20 days after all draft reports have been submitted: Premera must identify to the  
OIC Staff all factual errors contained in the draft reports.

11 Within 30 days after all draft reports have been submitted: Premera must submit all  
12 amendments to the Application.

13 Within 60 days after the date the executive summaries are submitted: Public hearings are  
14 held by the Commissioner for public comment.

15 (1) If Premera submits no amendment to the Application, within 37 days after all draft  
16 reports have been submitted or within 7 days upon receipt of formal notification by  
17 Premera that it will not amend the Application, whichever occurs first; or  
(2) If Premera amends the Application, within 30 days from the date of submission of the  
last amendment: The States' Consultants will submit their final reports ("Report Date").

18 Within 45 days after the Report Date, the States' Consultants may be deposed and  
19 all parties will disclose all testifying experts and fact witnesses.

20 Within 75 days after the Report Date, the interveners' and Premera's experts and  
all disclosed fact witnesses may be deposed.

21 Within 90 days after the Report Date, formal discovery is closed.

22 Within 100 days after the Report Date, the OIC Staff will pre-file all direct  
23 testimony.

24  
25 **JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 27**

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Within 130 days after the Report Date, the interveners and Premera will pre-file all direct testimony and testimony responsive to the OIC Staff pre-filed direct testimony.

Within 160 days after the Report Date, the parties may pre-file testimony responsive to the interveners’ and Premera’s pre-filed direct testimony.

190 days after the Report Date, the adjudicative hearing is convened.

1 **ATTACHMENT C**

2 Background information regarding the suggested candidates for Special Master is attached  
3 hereto. The websites for this information are:

4 <http://www.jdrllc.com/finkle.html>

5 <http://www.jdrllc.com/carroll.html>

6 <http://www.jdrllc.com/Pekelis.html>

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25 **JOINT PROPOSAL REGARDING DISCOVERY  
AND HEARING SCHEDULE - 29**

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